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FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

MAY 19 2004

IN RE:

APPLICATION:

Application for Permission to Reapply for Admission into the United States after
Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico who was found inadmissible under sections 212(a)(6)(C)(i) and 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(7)(A)(i)(I), for having attempted to procure admission into the United States by fraud or willful misrepresentation. On or about October 31, 1998, the applicant was removed from the United States. Subsequently, the applicant reentered the United States without inspection by an immigration officer and without first obtaining permission to reapply for admission to the United States. On April 26, 2001, the applicant was again removed from the United States. The applicant is married to a naturalized United States citizen. The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside in the United States with her spouse and United States citizen child.

The director determined that the applicant is not eligible to apply for permission to reapply for admission into the United States because she is subject to reinstatement under section 241(a)(5) of the Act. The director denied the Form I-212 application accordingly. *See* Decision of the Director, dated September 11, 2003.

On appeal, counsel asserts that the applicant has patiently waited in Mexico for the past two years with her United States citizen child while she remains separated from her U.S. citizen husband. Counsel contends that the applicant's husband suffers hardship as a result of separation from his spouse and child. *See* Appeal of the Denial of an Application for Request to Re-enter After Deportation, dated October 8, 2003.

To support these assertions, counsel submits a declaration of the applicant's spouse, dated September 26, 2003; copies of mortgage statements and other financial documents of the applicant's spouse and copies of medical documents from Mexico. The AAO notes that translations for the Mexican documents are not included in the record. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a) of the Act, 8 U.S.C. § 1182(a) states in pertinent part:

(9) Aliens Previously Removed.-

(A) Certain aliens previously removed.-

- (i) Arriving aliens. – Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

....

(iii) Exception.-Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now the Secretary of Homeland Security (Secretary)] has consented to the alien's reapplying for admission.

Approval of a Form I-212 Application for Permission to Apply for Admission after Deportation or Removal requires that the favorable aspects of the applicant's case outweigh the unfavorable aspects.

In determining whether the consent required by statute should be granted, all pertinent circumstances relating to the applicant which are set forth in the record of proceedings are considered. These include but are not limited to the basis for deportation, recency of deportation, length of residence in the United States, the moral character of the applicant, his respect for law and order, evidence of reformation and rehabilitation, his family responsibilities, any inadmissibility to the United States under other sections of law, hardship involved to himself and others, and the need for his services in the United States.

Matter of Tin, 14 I&N Dec. 373, 374 (Comm. 1973).

The favorable factors in the application are the hardship imposed on the applicant's husband and child by the applicant's inadmissibility to the United States and the applicant's lack of a criminal record.

The unfavorable factors in the application include the fact that the applicant reentered the United States, without inspection, after being removed. The applicant failed to apply for permission to reenter prior to her reentry and therefore, was removed from the United States a second time. Additional unfavorable factors in the application include the applicant's fraudulent misrepresentations to immigration inspectors on October 31, 1998 resulting in inadmissibility to the United States and requiring the applicant to seek an approved Waiver of Grounds of Excludability (Form I-601) in addition to the instant application.

The AAO notes that an applicant's prior residence in the United States is considered a positive factor only where that residence is pursuant to a legal admission or adjustment of status as a permanent resident. See *Matter of Lee*, 17 I&N Dec. 275 (Comm. 1978). The applicant offers no evidence of reformation or rehabilitation from her disregard for the immigration laws of this country.

The applicant has not established that the favorable factors in her application outweigh the unfavorable factors. The director's denial of the I-212 application was thus proper.

In discretionary matters, the applicant bears the full burden of proving her eligibility for discretionary relief. See *Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). The applicant has failed to establish that she warrants a favorable exercise of the Secretary's discretion. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.